

HB # 4333

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4333

(By Delegate s. Campbell, Higgins and Love)



Passed March 11, 1994

In Effect 90 Days from Passage

ENROLLED
H. B. 4333

(By DELEGATES CAMPBELL, HIGGINS AND LOVE)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commercial driver's licenses; changing and adding certain definitions; and clarifying that felony convictions for drug-related crimes results in commercial driver's license disqualification for life.

Be it enacted by the Legislature of West Virginia:

That sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol,
6 propanol and isopropanol;

7 (b) Beer, ale, port or stout and other similar fer-
8 mented beverages (including sake or similar products)
9 of any name or description containing one half of one
10 percent or more of alcohol by volume, brewed or
11 produced from malt, wholly or in part, or from any
12 substitute therefor;

13 (c) Distilled spirits or that substance known as ethyl
14 alcohol, ethanol, or spirits of wine in any form (including
15 all dilutions and mixtures thereof from whatever source
16 or by whatever process produced); or

17 (d) Wine of not less than one half of one percent of
18 alcohol by volume.

19 "Alcohol concentration" means:

20 (a) The number of grams of alcohol per one hundred
21 milliliters of blood; or

22 (b) The number of grams of alcohol per two hundred
23 ten liters of breath; or

24 (c) The number of grams of alcohol per sixty-seven
25 milliliters of urine.

26 "Commercial driver license" means a license issued in
27 accordance with the requirements of this article to an
28 individual which authorizes the individual to drive a
29 class of commercial motor vehicle.

30 "Commercial driver license information system" is the
31 information system established pursuant to the federal
32 commercial motor vehicle safety act to serve as a
33 clearinghouse for locating information related to the
34 licensing and identification of commercial motor vehicle
35 drivers.

36 "Commercial driver instruction permit" means a
37 permit issued pursuant to subsection (e), section nine of
38 this article.

39 "Commercial motor vehicle" means a motor vehicle
40 designed or used to transport passengers or property:

41 (a) If the vehicle has a gross vehicle weight rating as
42 determined by federal regulation;

43 (b) If the vehicle is designed to transport sixteen or
44 more passengers, including the driver; or

45 (c) If the vehicle is transporting hazardous materials
46 and is required to be placarded in accordance with 49
47 C.F.R. part 172, sub-part F.

48 "Commissioner" means the commissioner of motor

49 vehicles of this state.

50 “Controlled substance” means any substance so
51 classified under the provisions of chapter sixty-a of this
52 code (uniform controlled substances act) and includes all
53 substances listed on Schedules I through V, article two
54 of said chapter sixty-a, as they may be revised from time
55 to time.

56 “Conviction” means the final judgment in a judicial or
57 administrative proceeding or a verdict or finding of
58 guilty, a plea of guilty, a plea of nolo contendere, an
59 implied admission of guilt or a forfeiture of bond or
60 collateral upon a charge of a disqualifying offense, as
61 a result of proceedings upon any violation of the
62 requirement of this article.

63 “Department” means the department of motor
64 vehicles.

65 “Disqualification” means a prohibition against driving
66 a commercial motor vehicle.

67 “Drive” means to drive, operate or be in physical
68 control of a motor vehicle in any place open to the
69 general public for purposes of vehicular traffic. For
70 purposes of sections twelve, thirteen and fourteen of this
71 article “drive” includes operation or physical control of
72 a motor vehicle anywhere in this state.

73 “Driver” means any person who drives, operates or is
74 in physical control of a commercial motor vehicle, in any
75 place open to the general public for purposes of
76 vehicular traffic, or who is required to hold a commer-
77 cial driver license.

78 “Driver license” means a license issued by a state to
79 an individual which authorizes the individual to drive
80 a motor vehicle of a specific class.

81 “Employee” means a person who is employed by an
82 employer to drive a commercial motor vehicle, including
83 independent contractors. An employee who is employed
84 by himself or herself as a commercial motor vehicle
85 driver must comply with both the requirements of this
86 article pertaining to employees and employers.

87 “Employer” means any person, including the United
88 States, a state, or a political subdivision of a state, who
89 owns or leases a commercial motor vehicle, or assigns
90 a person to drive a commercial motor vehicle.

91 “Farm vehicle” includes a motor vehicle or combina-
92 tion vehicle registered to the farm owner or entity
93 operating the farm and used exclusively in the transpor-
94 tation of agricultural or horticultural products, live-
95 stock, poultry and dairy products from the farm or
96 orchard on which they are raised or produced to
97 markets, processing plants, packing houses, canneries,
98 railway shipping points and cold storage plants and in
99 the transportation of agricultural or horticultural
100 supplies and machinery to such farms or orchards to be
101 used thereon.

102 “Farmer” includes owner, tenant, lessee, occupant or
103 person in control of the premises used substantially for
104 agricultural or horticultural pursuits, who is at least
105 eighteen years of age with two years licensed driving
106 experience.

107 “Farmer vehicle driver” means the person employed
108 and designated by the “farmer” to drive a “farm vehicle”
109 as long as driving is not his sole or principal function
110 on the farm, who is at least eighteen years of age with
111 two years licensed driving experience.

112 “Gross combination weight rating (GCWR)” means the
113 value specified by the manufacturer as the loaded
114 weight of a combination (articulated) vehicle. In the
115 absence of a value specified by the manufacturer,
116 GCWR will be determined by adding the GVWR of the
117 power unit and the total weight of the towed unit and
118 any load thereon.

119 “Gross vehicle weight rating (GVWR)” means the
120 value specified by the manufacturer as the loaded
121 weight of a single vehicle. In the absence of a value
122 specified by the manufacturer the GVWR will be
123 determined by the total weight of the vehicle and any
124 load thereon.

125 “Hazardous materials” has the meaning as that found

126 in Section 103 of the Hazardous Materials Transporta-
127 tion Act (49 App. U.S.C. 1801 et seq.).

128 “Motor vehicle” means every vehicle which is self-
129 propelled, and every vehicle which is propelled by
130 electric power obtained from overhead trolley wires but
131 not operated upon rails.

132 “Out-of-service order” means a temporary prohibition
133 against driving a commercial motor vehicle.

134 “Serious traffic violation” means:

135 (a) Operating a motor vehicle under the influence of
136 alcohol or a controlled substance in violation of the
137 provisions of section two, article five, chapter seventeen-
138 c of this code;

139 (b) Failure to stop and render aid and provide
140 required information after involvement in a motor
141 vehicle accident resulting in death, injury or property
142 damage, as provided in section five, article three,
143 chapter seventeen-b and sections one through five,
144 inclusive, article four, chapter seventeen-c of this code;

145 (c) A felony in the commission of which a motor
146 vehicle is used; as stated in subsection (2), section five,
147 article three, chapter seventeen-b of this code;

148 (d) Excessive speeding defined as fifteen miles per
149 hour in excess of all posted limits;

150 (e) Reckless driving as defined in section three, article
151 five, chapter seventeen-c of this code including erratic
152 lane changes and following the vehicle ahead too closely;

153 (f) A violation of state or local law relating to motor
154 vehicle traffic control (other than a parking violation)
155 arising in connection with a fatal traffic accident.
156 Vehicle weight and vehicle defects are excluded as
157 serious traffic violations;

158 (g) Violation of an out-of-service order; or

159 (h) Any other serious violations as may be determined
160 by the U. S. Secretary of Transportation.

161 “State” means a state of the United States and the

162 District of Columbia.

163 “Tank vehicle” means any commercial motor vehicle
164 that is designed to transport any liquid or gaseous
165 materials within a tank that is either permanently or
166 temporarily attached to the vehicle or the chassis. Such
167 vehicles include, but are not limited to, cargo tanks and
168 portable tanks, as defined in Part 171 of Title 49, C.F.R.
169 Part 171. However, this definition does not include
170 portable tanks having a rated capacity under one
171 thousand gallons.

172 “At fault traffic accident” means for the purposes of
173 waiving the road test, a determination, by the official
174 filing the accident report, of fault as evidenced by an
175 indication of contributing circumstances in the accident
176 report.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* — On or after the first
2 day of April, one thousand nine hundred ninety-two, any
3 person is disqualified from driving a commercial motor
4 vehicle for a period of not less than one year if convicted
5 of a first violation of:

6 (1) Driving a commercial motor vehicle under the
7 influence of alcohol or a controlled substance;

8 (2) Driving a commercial motor vehicle while the
9 alcohol concentration of the person’s blood or breath is
10 four hundredths or more;

11 (3) Leaving the scene of an accident involving a
12 commercial motor vehicle driven by the person;

13 (4) Using a commercial motor vehicle in the commis-
14 sion of any felony as defined in this article: *Provided,*
15 That the commission of any felony involving the
16 manufacture, distribution, or dispensing of a controlled
17 substance, or possession with intent to manufacture,
18 distribute or dispense a controlled substance falls under
19 the provisions of subsection (d) of this section.

20 (5) Refusal to submit to a test to determine the
21 driver’s alcohol concentration while driving a commer-
22 cial motor vehicle.

23 In addition, the conviction of any of the following
24 offenses as an operator of any vehicle is a disqualifica-
25 tion offense:

26 (1) Manslaughter or negligent homicide resulting
27 from the operation of a motor vehicle as defined under
28 the provisions of section five, article three, chapter
29 seventeen-b, and section one, article five, chapter
30 seventeen-c of this code;

31 (2) Driving while license is suspended or revoked, as
32 defined under the provisions of section three, article
33 four, chapter seventeen-b of this code;

34 (3) Perjury or making a false affidavit or statement
35 under oath to the department of motor vehicles, as
36 defined under the provisions of subsection (4), section
37 five, article three, and section two, article four, chapter
38 seventeen-b of this code.

39 If any of the above violations occurred while trans-
40 porting a hazardous material required to be placarded,
41 the person is disqualified for a period of not less than
42 three years.

43 (b) A person is disqualified for life if convicted of two
44 or more violations of any of the offenses specified in
45 subsection (a) of this section, or any combination of those
46 offenses, arising from two or more separate incidents.

47 (c) The commissioner may issue rules establishing
48 guidelines, including conditions, under which a disqual-
49 ification for life under subsection (b) of this section may
50 be reduced to a period of not less than ten years.

51 (d) A person is disqualified from driving a commer-
52 cial motor vehicle for life who uses a commercial motor
53 vehicle in the commission of any felony involving the
54 manufacture, distribution or dispensing of a controlled
55 substance, or possession with intent to manufacture,
56 distribute or dispense a controlled substance.

57 (e) A person is disqualified from driving a commer-
58 cial motor vehicle for a period of not less than sixty days
59 if convicted of two serious traffic violations, or one
60 hundred twenty days if convicted of three serious

61 violations, committed in a commercial motor vehicle
62 arising from separate incidents occurring within a
63 three-year period.

64 (f) After suspending, revoking or cancelling a com-
65 mercial driver's license, the department shall update its
66 records to reflect that action within ten days.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

Ernest E Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Russell Palmer

Clerk of the Senate

Donald L. Hepp

Clerk of the House of Delegates

Paul Burdette

President of the Senate

Carl Albert

Speaker of the House of Delegates

The within is approved this the 29th day of March 1994.

Caston Capner

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 10:10 am